IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 55 OF 2005

Mr. Duggan Adrian Kevin,
s/o. Idris Duggan
r/o. 29, Rainway, Terr Bhinia
Gwert, South Wales, U.K.
Presently lodged in Central Jail Aguada,
Aguada, Goa. ..... Applicant/ Accused

V e r s u s

State of Goa,
(Through Public Prosecutor),
Panaji, Goa. ..... Respondent

Mr. M. Teles, Advocate for the Applicant.

Ms. Winnie Coutinho, Public Prosecutor for the State.

CORAM: SMT. RANJANA DESAI &
N. A. BRITTO, J.J.

DATE: 18th July, 2006.

JUDGMENT (*Per N. A. BRITTO, J.*)

This appeal is by the accused who has been convicted and sentenced under Section 302 I.P.C. to life imprisonment and to pay a fine of Rs.5,000/- in default to undergo S.I. for six months.

2. The case of the prosecution was that on or about 25.12.2003, between 4.30 to 5.20 a.m., at Vagator, Anjuna, Goa, the accused committed the murder of Ms. Catherine Hazell Campbell, aged about 43 years.

3. The case of the accused was that he has been falsely implicated. The defence of the accused in brief is that a Italian came and assaulted both of them.

4. There is no dispute that the accused and the deceased, both British Nationals, checked in room no.3 of Mahindra Guest House, situated at Vagator, owned by the family of Pandurang and Sheetal Govekar, which consists of five rooms. It is a small time guest house, which did not have either a receptionist or a room boy or any security and once rooms are given to the guests, the guests are even entitled to put their own lock and go about.

5. On 25.10.2003, at about 4.30 a.m., P.w.3/Sheetal Govekar, heard a lady screaming and the said screams came from the direction of their guest house. Her family lives at a distance of about 30 metres or so

from the guest house. P.w.3/Sheetal, came near the guest house and found that the screams were coming from room no.3. She knocked at the door and said “Hello” but nobody opened the door. The lady continued her cries and screaming. She returned back and woke up her son P.w.2/Datta Prasad Govekar and both returned to the said room and then P.w.2/Datta Prasad, knocked at the door but the door was not opened and meanwhile the screaming and the cries continued. P.w.2/Datta Prasad, again returned home and informed his father, P.w.1/Pandurang Govekar, as to what had happened and, thereafter, the latter informed the police on no. 100. P.w.2/Datta Prasad Govekar returned to the room and again knocked at the door and he still heard the lady crying and he latched the door from outside and he informed the inmates of the room that the door was latched from outside. Meanwhile, P.w.5/Sawant and P.w.7/Ibrampurkar, Police Constables, who were on Patrol duty, received a wireless message on their wireless set stating that there was a fight in Mahindra Guest House at Vagator, and both of them on their motorcycle, driven by P.w.5/Sawant, came to the guest house. The Police Constables certainly did not require a board showing the name of the guest house, which at the relevant time was not there to identify the said guest house and therefore the submission that they could not have reached there, cannot be accepted. Beat constables are

expected to know about the existence of guest houses within their beat area. P.w.5/Sawant and P.w.7/Ibrampurkar, found the door of the room of the said hotel latched from outside and they peeped into and saw the deceased lying in a pool of blood and the accused sitting on the cot. They did not open the room. They also found P.w.2/Datta Prasad and P.w.3/Sheetal Govekar there. Whether P.w.2/Datta Prasad or P.w.3/Sheetal Govekar, were standing in the said guest house or on the road, which is adjacent to it, at a distance of about 5 metres, again would be of no consequence. P.w.5/Sawant and P.w.7/Ibrampurkar, informed the Anjuna Police Station about the incident and, thereafter, P.w.12/Police Inspector Nandakishor Raikar, reached there along with other police personnel. Upon his arrival, the police opened the door. Whether the door was opened by the I.O. as stated by P.w.5/Sawant and P.w.7/Ibrampurkar, or P.w.5/Sawant and P.w.7/Ibrampurkar as stated by P.w.2/Datta Prasad and P.w.3/Sheetal, would again be of no consequence. They all saw that the deceased was lying on the floor in a pool of blood and the accused was sitting on the bed. If earlier, P.w.5/Sawant and P.w.7/Ibrampurkar had seen the deceased either through the window as stated by them, would not make any difference.

6. Since the accused had sustained injuries, P.w.12/P.I. Raikar, came with the accused first to the Police Station and then the accused was taken to Asilo Hospital at Mapusa, where has was examined by P.w.8/Dr. Kotkar, at about 6.40 a.m. The evidence of P.w.8/Dr. Kotkar shows that the accused was referred to her with a history of assault and P.w.8/Dr. Kotkar found on the accused three injuries namely one incised wound of 1 cm x skin deep on the right little finger, another incised wound of the same dimension on the left upper arm and yet another injury comprising of three incised wounds on the left side of the chest. P.w.8/Dr. Kotkar also found the accused drowsy and was not ready to give any statement as regards the cause of injuries. P.w.8/Dr. Kotkar, referred the accused to Goa Medical College, where he was examined by P.w.10/Dr. Ganoo. It is not necessary to refer to the description of the first two injuries given by P.w.10/Dr. Ganoo, found on the person of the accused, but the third injury would be relevant to be mentioned. It was a puncture wound 1.5 cms. x .75 cms, which had penetrated the parietal pleura, and, she also found that the left lung of the accused had collapsed. As per P.w.8/Dr. Kotkar, as well as P.w.1o/Dr. Ganoo, the said injuries could have been caused with M.O.1 and M.O.2 i.e. blades with handle of a scissor. The accused was later discharged on 01.01.2004.

7. P.w.12/P.I. Raikar, returned to the scene and at about 8.10 hours, conducted the panchanama of the scene of offence in the presence of P.w.6/Surendra Govekar, who was a member of the Village Panchayat and also related to the Complainant. Meanwhile, the scene was being guarded by the said two constables by P.w.5/Sawant and P.w.7/Ibrampurkar. As stated by P.w.6/Surendra Govekar, there were two iron cots, in the said room and the deceased was lying in a pool of blood with injuries on the face, neck, stomach, etc. P.w.6/Surendra Govekar, stated that they also found three injections, one Ketamine injection and one disposable syringe. When these articles were later on sent to the Central Forensic Science Laboratory, one of them was found with Ketamine and two of them were found with Mefartamine. The said injections were found on the floor. P.w.6/Surendra Govekar also stated that a scissor, split in two parts was found one near the body of the deceased and the other on the cot. These articles (M.O.1 and M.O.2), were also found with human blood, group of which was not detected due to disintegration and it was certainly not necessary, in the circumstances of the case, that its group was also required to be positively established. The inquest panchanama followed at about 11.50 hours. The police photographer was called and P.w.11/ Ashraf,

Police Photographer, came to the scene and took 16 photographs of the deceased around 12 noon. The timing at which they were taken is not at all relevant. The evidence of P.w.6/Surendra Govekar, inspires confidence and cannot be rejected only because he came there on being phoned by the family of Complainant.

8. The dead body of the deceased was sent for post mortem. The dead body appears to have been received at Goa Medical College at about 3.30 p.m. on 25.12.2003, and, the history as recorded on the post mortem report, exhibit 33, shows that it was reported that the deceased was assaulted by her friend Daggan Adrian Kevin. P.w.9/Dr. Rodrigues, Associate Professor of Forensic Medicine, conducted the post mortem of the deceased on the same day and he found that the deceased was of good built, there was dried blood in the mouth and nostrils, etc. P.w.9/Dr. Rodrigues, found as many as 21 incised punctured wounds, a detailed description of which, he has given on page 3 of his report, exhibit 33, as well as in his deposition before the Court. The said incised punctured wounds were on the face, neck, chest and abdomen, of which he has given a pictorial representation on page 4. As per him, the death of the deceased was caused due to haemorrhage and shock vide stab injury no.1, which was

incised punctured stab wound of 5 x 3 x 7 cms. obliquely placed over left middle front and side of neck, upper posterior end was 5 cms. below left mastoid process and lower anterior hand was 5 cms above mid clavicle. The posterior angle was acutely cut and the anterior end was less acutely cut with margins abraded. Dr. Rodrigues opined that the said injury was necessary fatal and fresh at the time of death, which occurred within 24 hours prior to post mortem examination. According to him, the blood group of the deceased was AB Rh positive. Dr. Rodrigues also opined that all the said injuries could have been caused by pointed penetrating cutting weapon and were ante mortem in nature and they could have been caused with one part of scissor (blade and handle), referred to as scissor tongs (M.O.1 and M.O.2) i.e. a scissor in two parts.

9. Admittedly, there were no eye witnesses to the incident and the case was based purely on circumstantial evidence. As far as the death of the deceased, being homicidal, there is no dispute about it and otherwise has been proved by the evidence of P.w.9/Dr. Rodrigues. In fact the accused has admitted in answer to question 34, in 313 statement recorded, that the deceased was lying on the floor in an unconscious state with injuries and bleeding. The learned Sessions Judge, picked up about 7 circumstances, as

mentioned in Para 10 of the Judgment. The fact that a pair of scissors, separated in two parts with blood stains, is one of them but two circumstances which are formidable in nature and which speak loudly against the accused are the circumstances that P.w.1/Pandurang Govekar, P.w.2/Datta Prasad and P.w.3/Sheetal, had heard the scream of a lady and that could be none other then the deceased. They did not hear any male whisper from the accused. The other circumstance is that the accused was sitting on a cot besides the dead body of the deceased, with injuries on him. This is what P.w.1/Pandurang, P.w.2/Datta Prasad, P.w.3/Sheetal, P.w.5/Sawant, P.w.7/Ibrampurkar and P.w.12/P.I. Raikar, have consistently and convincingly stated. Whether previously P.w.5/Sawant and P.w.7/Ibrampurkar had seen the deceased and the accused in that position, either through the window as claimed by them or through a crevice of the door, would be wholly immaterial for the fact remains that from the time P.w.3/Sheetal reached there and the door was opened upon the arrival of P.w.12/P.I. Raikar, the door was always closed. P.w.5/Sawant and P.w.7/Ibrampurkar probably did not hear the screams because by the time they reached there, the end of the deceased had come. This is a circumstance which speaks loudly against the plea taken by the accused, as we shall see, a little later in more details. It has been submitted

on behalf of the accused, by Shri Teles, the learned Counsel of the accused, that as per P.w.2/Datta Prasad Govekar and P.w.3/Sheetal, the door was closed from inside, and therefore, the door could not have been opened from outside upon the arrival of the police. This is an area where the prosecution has not been able to throw much light. The learned Sessions Judge has tried to explain this situation by observing that the internal latch could have been removed by the accused at any time prior to that. However, the only explanation which we can think of is that P.w.2/Datta Prasad and P.w.3/Sheetal, assumed that the door was latched from inside when in fact it was not, because none opened it inspite of having knocked at the door several times. There is no dispute that P.w.2/Datta Prasad Govekar locked the door from outside after he found that nobody was opening the same and that was the wisest thing P.w.2/Datta Prasad could have done in order to prevent anyone from escaping from inside the room. It has been submitted on behalf of the accused that the family of Govekar (P.w.1, P.w.2 and P.w.3), have conspired to implicate the accused so as to avoid a blame coming on them and, therefore, they are interested witnesses. We are not inclined to accept such a submission. In our view, P.w.1/Pandurang, P.w.2/Datta Prasad and P.w.3/Sheetal, are the most natural and probable witnesses to the crime and they have no interest

whatsoever in the prosecution. P.w.2./Datta Prasad and P.w.3/Sheetal, would not falsely implicate their own guest to save someone else. They are independent witnesses and the versions given by them have been consistent apart from slight variation in the evidence given by them in relation to their statement previously recorded by the police. The variations are so minor that they do not at all affect the main facts stated by them. It has also been submitted on behalf of accused that the F.I.R. is fabricated. In view of the contradictory statements made by P.w.3 that she had given it at the scene and P.w.12/P.I. Raikar, stating that it was lodged at the Police Station. In our opinion, this inconsistency in no way, affects the creditability of the entire case of the prosecution. In fact, it has been stated by the Supreme Court in the case of ***Dharmendra Singh v. State of Gujarat (2002 (4) S.C.C. 679)***, where a somewhat similar contradiction was found that such a contradiction was not sufficient to discredit the main prosecution case which was otherwise reliable and trustworthy. The next submission made on behalf of the accused is that the prosecution has not explained the injuries on the accused. It is nobody's case that any of the prosecution witnesses had seen the accused or the deceased being inflicted with the said injuries. The explanation of injuries on the person of the accused is not a inflexible rule, which is applicable in all situations. As stated by the Apex

Court, in the case of ***Ramlagan Singh & Ors. v. State of Bihar (AIR 1972 S.C. 2593),*** one of the requirements is that questions are required to put to the prosecution witnesses regarding the injuries and if there were no questions put, there can be no occasion for the prosecution witnesses to explain the injuries on the persons of the accused. The Apex Court in the case of ***Dhananjay Shanker Shetty v. State of Maharashtra (AIR 2002 S.C. 2787)***, has stated that it cannot be laid down as a matter of law or as a invariable rule that whenever accused sustained an injury in the same occurrence, the prosecution is obliged to explain it and on its failure to do so, the prosecution case should be disbelieved. Non-explanation of injuries assumes significance when there are material circumstances which make the prosecution case doubtful. The said observations made by the Apex Court relying on two other decisions reported in ***Takhaji Hiraji v. Thakore Kubersing Chamansing & Ors. (2001(6) S.C.C. 145*** and ***Kashiram & Ors. v. State of M.P. (2002(1) S.C.C. 71***. In the case at hand, it was certainly not for the prosecution to explain the injuries on the accused but for the accused to have explained them, not only his, but also of the deceased. No doubt the accused had tried to explain them, but that plea, as we shall refer to a little later, in little more details, has not been proved by the accused, by any standard whatsoever.

10. We say that it is for the accused to have explained the said injuries on his own person as well on the person of the deceased, based on Section 106 of the Indian Evidence Act, which reads as follows:

> "106 – Burden of proving fact especially within knowledge and when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

11. As already stated, the accused and the deceased were found all alone in room no.3 of the said guest house with door closed, which was subsequently closed from outside by P.w.2/Datta Prasad and was opened only after arrival of P.w.12/P.I. Raikar of Anjuna Police Station. In a situation like this, where the accused is found shrouded in suspicion and is enmeshed in an incriminatory network of facts, it becomes his duty to explain the circumstances yielding to an adverse inference being drawn against him and if he omits to do so, and fails in creating a dent in the prosecution story, his omission assumes a sinister significance. There is no doubt that the burden of proving the guilt of the accused is undoubtedly on the prosecution. It is well said that the dead tell no tales and the accused

who is living, had to explain the injuries on himself as well as on the deceased, in the circumstances he was found in the room of the said guest house.

12. A Division Bench of Madras High Court in the case of ***Rajammal & Ors. v. State (1993 Cri. L.J. 3029),*** referred to the case of ***Shambhu Nath Mehra v. State of Ajmer (1956 S.C. 404)***, as regards the object of Section 106 of the Evidence Act, 1872. The said observation reads thus :

> "Section 106 is an exception to Section 101. Section 101 lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly nor intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible or at any rate disproportionately difficult, for the prosecution to establish facts which are 'especially' within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word 'especially' stresses that it means facts that are pre-eminently or exceptionally within his

knowledge."

The Division Bench was considering the case of a dowry death where the victim had died due to manual strangulation and her in laws and brother were alone present in the house at the time of the death and the Court came to the conclusion that the only conclusion which was possible to be drawn on the facts of that case was that they had participated in the crime.

13. Another Division Bench of the same Court in the case of ***Shunmugasundaram v. State (1997 Cri. L. J. 499)*** found that the accused was found alone present with the deceased at the time and place of offence and had absconded thereafter and held that the accused was bound to explain thereof as facts were within his special knowledge and in the absence of any explanation by him, the only possible inference was that he participated in the incident.

14. In the case of ***Balram Prasad Agarwal v. State of Bihar (1997(1) Crimes (SC) 10),*** the Supreme Court dealt with the scope of Section 106 of the Indian Evidence Act and held that in a criminal case, the burden of proof is on the prosecution to prove the case beyond reasonable

doubt. That was a case when on the fateful night, apart from the victim, only the accused were present in the house. The Court observed that what happened on that night and what led to the deceased falling in the well would be wholly within the personal and special knowledge of the accused but they had kept mum on this aspect. The Court further observed that the facts which were in the personal knowledge of the accused who were present in the house on that fateful night could have been revealed by them to disprove the prosecution case and this burden of Section 106 of the Indian Evidence Act was not discharged by them. In this case, the accused was found with injuries besides the dead body of the deceased and the only inference which can be drawn is that it is the accused who caused the injuries on the deceased and consequently her death. This is not a case where two views are possible, but only one view, that it is the accused who is responsible for the death of the deceased.

15. Another submission made on behalf of the accused is that the prosecution failed to prove the motive. It is often said that motive bears a special significance in a case which involves circumstantial evidence but what it really does is that if it is proved, it makes the case stronger but its absence does not mean that the case is weak in as much as absence of proof

of motive does not render the evidence unworthy of being accepted. In fact, proof of motive is of no consequence when the evidence is strong and when circumstances speak loudly, boldly and clearly, as in the case at hand. Many a times, the motive remaining locked in the mind of the accused. As stated by the Apex Court in ***Dhananjay Shanker Shetty v. State of Maharashtra*** (supra), it is well settled that merely because motive is neither alleged nor proved, the same would ipso facto not affect the prosecution case but in case there are other circumstances to create a doubt regarding the veracity of the prosecution case, this may also become material. As already stated, in a fact situation, where the accused and the deceased were found all alone in a closed room, one alive and the other dead, it was certainly not expected of the prosecution to dwell much on the motive of the crime since the circumstances against the accused in this case are very strong. In our view, the proof of motive is irrelevant in this case.

16. That takes us to the plea of the accused. As per the accused, on 25.10.2003, being a Christmas day, till about 3.10 hours, the accused and the deceased drank and danced near Bamboo Hilltop and as they were dancing, one Italian introduced himself to them. It was expected that the accused would remember his name but he did not know. The accused

stated that he too joined them dancing and while they were dancing, the said Italian put something in the beer and offered him to drink and after he drank, he fell giddy and uncomfortable, and therefore he and the deceased came to the guest house and as they were returning, he saw the said Italian following them and after reaching the guest house, they were surprised to see the Italian enter their room and started interfering with his girlfriend, the deceased, and both of them shouted at him and asked him to go out of the room and then the said Italian attacked and assaulted them with a sharp weapon on his chest as, a result of which he sustained injuries on his chest, hand and other parts of the body and he fell down. The accused stated that the deceased, his girlfriend, came to his rescue but she was assaulted by the said Italian and killed with the same weapon and the said person left the place by committing theft of various articles, which he has mentioned including cash and traveller's cheques. He further stated that they shouted and screamed but nobody came to their rescue but after sometime, he saw the son of the Complainant(P.w.2) and the Complainant enter the room by opening the door and seeing their condition, he closed the door and went away. The accused stated that he was very bad and was not in a position to talk and that he had told the police about the incident but they did not listen to him; that he had told the same story to the Doctor when he was

taken for medical examination. He produced the medical paper to that effect.

17. To derive support to the plea of the accused, on behalf of the accused, reliance has been placed on the case of ***Ronal Kiprono Ramkat v. State of Haryana (SC ACQ CrJ 1224)***. At the outset it must be observed that was a case where the Supreme Court had found infirmities, improbabilities and contradictions in the dying declaration itself and two of the material witnesses were not examined without assigning any reason. The deceased had gone to the residence of the accused of her own and was found dead in a naked condition. The Supreme Court also noted manipulation of the FIR by inserting certain words. The accused had taken the plea that he and the deceased were friends and they had love afair among them and that the deceased had come to his house that fateful day and some unknown persons came to assault the deceased and, in the process to save her, he was also assaulted and suffered injuries. According to him, the deceased had died on the spot and P.w.5, who had lodged the complaint was not tolerant of the love affair between him and the deceased and that a false case was foisted against him after due deliberation and consultation. The Apex Court therefore observed that the accused and the

deceased might have been in compromising position and were surprised and attacked by an assailant and since the injuries on the accused could not be self inflicted, his defence that he had sustained the injuries at the hands of unknown person, appeared to be probable and, therefore, proceeded to order the acquittal of the accused. In our view, this Judgment, which according to the learned Counsel, should help the case of the accused, does not at all help the accused in a fact situation in this case which we have narrated hereinabove.

18. As stated by P.w.2/Datta Prasad and P.w.3/Sheetal, the door of room no.3, where the accused and the deceased were found was closed. It would not have been closed in case any other assailant had entered the said room and assaulted the accused and the deceased and had run away. This is highly improbable. In such a situation the door would have been found open. The version of the accused that both of them had screamed has been falsified by the family of Govekar, who have all consistently stated that they had heard the screaming of a lady only. The accused in case he was assaulted by a stranger, whose name the accused has chosen not to give, would have immediately complained to P.w.12/P.I. Raikar on his arrival at the scene. P.w.8/Dr. Kotkar, has stated that the accused was not ready to

give any statement as regards the cause of injuries though he appeared to be drowsy. Nothing prevented the accused from telling P.w.8/Dr. Kotkar, that an Italian stranger was the author of the said injuries. Not even a suggestion was put to P.w.8/Dr. Kotkar, that the accused had told her that he was assaulted by an Italian stranger. Next, the accused was examined by P.w.10/Dr. Gano, at about 7.45 a.m., on the same day. The accused also did not complain to her that he was assaulted by a stranger. The accused was not arrested and was discharged from the hospital on 01.01.2004. The accused was free to lodge a complaint with the police regarding the assault upon him and the deceased but did not do so. The accused must have certainly been produced before the learned J.M.F.C. within 24 hours of his arrest and the accused did not lodge any complaint that a stranger had assaulted him and the deceased. For the first time, the accused complained to a Doctor was on 16.01.2004, and that was after 22 days after the incident as rightly noted by the learned Sessions Judge. It is submitted on behalf of the accused that the accused was drowsy till he was discharged on 01.01.2004. There is nothing on record to suggest that the accused was drowsy and in case he was drowsy, the authorities of Goa Medical College, would not have discharged the accused from the hospital. It is therefore obvious that the plea taken by the accused is clearly belated and is by way

of afterthought and was taken so as to shield him from the situation he was found in. The plea put forward by the accused has therefore to be considered as a false defence. The Apex Court in the case of ***Mohanlal Pangasa v. The State of U.P. (AIR 1974 S.C. 1144)*** has held that, amongst the circumstances which go against the accused's innocence is a falsity of the plea that he puts forward and it is not illegal to take into consideration the circumstances also, if there are other compelling materials bringing in the guilt of the accused. In this case, there are, and the falsity of the defence plea could be taken as another circumstance going against the accused.

19. The learned Sessions Judge has convicted the accused under Section 302 I.P.C. and sentenced him to life imprisonment and to fine. As already noted, the deceased was found dead and the accused had found with three formidable injuries including one, due to which, his lung was punctured and had collapsed. This certainly could not be a self inflicted injury. The circumstances of the case in which the deceased and the accused were found, do suggest that there was some sort of a fight between the accused and the deceased, the latter being a well built lady. No doubt, the circumstances which we have discussed hereinabove, cumulatively,

unerringly and convincingly point out that it is the accused and none else who is the author of the injuries found on the deceased and they are inconsistent with the innocence of the accused and are incapable of being explained by any other reasonable hypothesis excepting the guilt of the accused.

20. However, the fact that the accused also found with injuries certainly requires to be taken note of. Could the accused therefore been convicted for a first degree murder under Section 302 I.P.C.? In our view, there appears to be scope for scaling down the conviction from Section 302 I.P.C. to Section 304(i) I.P.C., because the accused has also been found with injuries, rather grievous and which suggest a struggle between the deceased and the accused. In this context, we would like to refer to the case of ***Yogendra Morarji (AIR 1980 S.C. 660)***, wherein the Supreme Court held that notwithstanding the failure of the accused to establish positively the existence of circumstances which would bring his case within an exception, the circumstances proved by him may raise a reasonable doubt with regard to one or more of the necessary ingredients of the offence itself with which the accused stands charged. Thus, there may be cases where, despite the failure of the accused to discharge his burden under Section 105, the

material brought on record may, in the totality of the facts and circumstances of the case, be enough to induce in the mind of the Court a reasonable doubt with regard to the mens rea requisite for an offence under Section 299 contained in the Penal Code. The case at hand, appears to be similar to the case of ***Yogendra Morarji*** (supra). In the light of the above, we are therefore, inclined to scale down the conviction of the accused from Section 302 I.P.C. to Section 304(i) I.P.C. and reduce sentence from life imprisonment to a period of 10 years R.I. We, therefore, partly allow the appeal and modify the sentence as imposed by the learned Sessions Judge. The said sentence, as ordered by the learned Sessions Judge, shall be deem to have commenced from 01.01.2004.

21. Before parting, we would like to observe that there are certain lapses in the investigations committed by the investigating officer. The learned Sessions Judge, has observed and in our view rightly, that it was necessary for the prosecution to find out whether the accused was under the influence of drugs or for that matter of alcohol. From the history recorded on the autopsy report, it is very clear that P.w.12/P.I. Raikar, knew very well that the accused was the assailant of the deceased and yet he chose not

to arrest him and place in custody and waited till the accused was discharged from the Goa Medical College on 01.01.2004. The accused might have as well disappeared from this country as he was being treated in Goa Medical College. The statements of the Constables P.w.5/Sawant and P.w.7/Ibrampurkar, were recorded after about ten days inspite of the fact that they were attached to the same Police Station. The explanation given that the investigation officer was busy with police work and the investigation of other crimes, in our view, is no explanation at all which otherwise has been accepted by the learned Sessions Judge. Nevertheless, we are not inclined to believe that P.w.5/Sawant and P.w.7/Ibrampurkar, had been introduced to strengthen the case of the prosecution. In fact, they do not provide any strength to the case of the prosecution apart from what has been stated by P.w.2/Datta Prasad and P.w.3/Sheetal. Their presence at the scene appears to be natural once we accept that P.w.1/Pandurang had informed the police by dialing no.100 and only because there was delay in recording their statements, is not sufficient to discard their evidence. The contention that they were introduced to give shape and colour to the case, has got to be rejected.

22. In view of the above, the appeal is allowed partly and the

conviction and sentence imposed upon the accused is modified, as stated hereinabove.

SMT. RANAJAN DESAI, J.

N. A. BRITTO, J.

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